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Item 4 of the provisional agenda*
Consideration of the additional international legal instrument against trafficking in women and children

Revised draft Protocol to Prevent, Suppress and Punish Trafficking in Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime**

Proposal submitted by Argentina and the United States

The States Parties to this Protocol,

Taking note of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as "the Convention"),

Gravely concerned by the significant and increasing activities of transnational criminal organizations and others that profit from international trafficking in [women and children] [persons],[1]

Believing that women and children are particularly vulnerable to and targeted by transnational criminal organizations engaged in trafficking in persons,

Declaring that effective action to combat international trafficking in [women and children] [persons, in particular women and children] requires a comprehensive, international approach in the countries of origin, transit and destination that includes measures

* A/AC.254/10.

** The proposal contained in the present document was submitted by the Governments of Argentina and the United States of America, pursuant to the commitment they undertook at the first session of the Ad Hoc Committee (see A/AC.254/9). It supersedes the proposal submitted by the United States (A/AC.254/4/Add.3) and the proposal submitted by Argentina (A/AC.254/8), and takes into account comments made on those two proposals at the first session of the Ad Hoc Committee (see in particular the comments submitted by Australia and Canada (A/AC.254/5/Add.3).

[1] The proposal by Argentina is restricted to trafficking in women and children. The proposal by the United States, while recognizing that women and children are particularly vulnerable to trafficking, applies to trafficking in all persons. Whenever this issue arises in this combined text, both options are given.

to prevent such international trafficking, to punish the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the sexual exploitation of women and children, there is no universal instrument that addresses all aspects of trafficking in [women and children] [persons],

Concerned that, in the absence of such an instrument, [women and children] [persons] who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, *inter alia*, an international instrument addressing trafficking in women and children,

Convinced that supplementing the Convention with an international instrument for the prevention, suppression and punishment of trafficking in [women and children] [persons, in particular women and children,] will be useful in combating that crime,

Taking into account the provisions of the Convention,[2]

Have agreed as follows:

Article 1
Purpose

1. The purpose of this Protocol is to promote and facilitate cooperation among States Parties to prevent, investigate and punish international trafficking in [women and children] [persons] for the purpose of forced labour or sexual exploitation [, giving particular attention to the protection of women and children, who are so often the victims of such trafficking[3]].

2. [[4]To that end, [the purpose is, in particular, to encourage States Parties to undertake:[5]] [States Parties shall undertake:[6]]

(a) To adopt effective measures [, in accordance with their domestic law,[7]] to prevent trafficking in [women and children] [persons], as defined in this Protocol, and punish severely those who engage in that activity;

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[2] Australia and Canada noted that this Protocol should take into account work being done in other international forums (the International Labour Organization (the proposed convention concerning the prohibition and immediate elimination of the worst forms of child labour) and the Commission on Human Rights working group on an optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography) (see A/AC.254/5/Add.3).

[3] The language in brackets was proposed in document A/AC/254/4/Add.3.

[4] The language in brackets, beginning with "To that end" and ending with subparagraph 2 (f), was proposed in document A/AC.254/8. The language may be unnecessary, as it repeats provisions found later in the Protocol.

[5] The language in brackets was proposed in document A/AC.254/4/Add.3.

[6] The language in brackets was proposed in document A/AC.254/8.

[7] The language in brackets was proposed in document A/AC.254/8.

(b) To ensure that victims of trafficking in [women and children] [persons] receive appropriate protection;

(c) To promote cooperation among States Parties in order to combat more effectively trafficking in [women and children] [persons];

(d) To provide in appropriate cases for the safe and voluntary return of victims to their countries of origin or of habitual residence, or to a third country;

(e) To inform and educate the public about the causes and consequences of trafficking in [women and children] [persons]; and

(f) To provide victims with appropriate legal, medical, psychological and financial assistance whenever States Parties deem it necessary.]

Article 2

Option 1[8]

Scope of application

1. This Protocol shall apply to trafficking in persons as defined in paragraph 2 of this article.

2. For purposes of this Protocol, "trafficking in persons" means the recruitment, transportation, transfer, harbouring or receipt of persons:

(a) By the threat or use of kidnapping, force, fraud, deception or coercion, or

(b) By the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person,

for the purpose of sexual exploitation or forced labour.

3. For purposes of this Protocol, trafficking in persons for the purpose of sexual exploitation includes subjecting to such trafficking a child under the age of consent in the jurisdiction where the offence occurs, regardless of whether that child has consented.[9]

Option 2[10]

Definitions

For the purposes of this Protocol, the following definitions shall apply:

(a) "Child" shall mean any person under eighteen years of age;

(b) "Trafficking in children" shall mean any act carried out or to be carried out for an illicit purpose or aim by a criminal organization, jointly or through any of its members, that involves:

(i) Promoting, facilitating or coordinating the kidnapping, holding or hiding of a child, with or without his or her consent, for profit or otherwise, occasionally or repeatedly; or

[8] This option was proposed in document A/AC.254/4/Add.3.

[9] Australia and Canada proposed that a new paragraph be added after this paragraph to define the term "forced labour", perhaps by reference to existing international definitions such as the definition contained in the Forced Labour Convention, 1930, of the International Labour Organization (No. 29) (See A/AC.254/5/Add.3).

[10] This option was proposed in document A/AC.254/8.

(ii) Offering, delivering or receiving a child in exchange for money or any other payment in kind, or serving as an intermediary in those acts;

(c) "Trafficking in women" shall mean any act carried out or to be carried out for an illicit purpose or aim by a criminal organization, jointly or through any of its members, whether or not on behalf of another, whether or not for profit and whether occasionally or repeatedly, that involves:

(i) Promoting facilitating or coordinating the kidnapping, holding or hiding of a woman, with or without her consent, for illicit purposes or in order to force her to perform, not perform or tolerate an act or to subject her unlawfully to the power of another person;

(ii) Transporting a woman to or facilitating her entry into another State;

(d) "Illicit purpose or aim" shall mean:

(i) Reduction to slavery, servitude or other similar condition;

(ii) Maintenance of the victim in such conditions in order to demand, under the threat of some penalty, the performance of forced and compulsory labour to which the victim has not voluntarily consented or in order to force the person, in accordance with custom or by agreement, for payment or free of charge, to provide certain services without the freedom to change his or her condition;

(iii) The prostitution or other form of sexual exploitation of a woman or child, even with the consent of that person;

(iv) Any means of production, distribution or importation, in their present or future form, of graphic or audio-visual material focused on the sexual conduct of women or children or on the genitals of such persons;

(v) The organization, promotion or use of tourism-related activities or journeys involving the sexual exploitation of women;

(vi) Facilitating, promoting or acting as an intermediary in acts aimed at rendering uncertain, changing or annulling the marital status of a woman, in any manner or by any means, whether or not for payment or for the promise thereof, whether or not in accordance with a traditional or customary practice and with or without the use of threats or abuse of authority; or

(vii) Extraction of body organs or organic tissue.

Article 3
Obligation to criminalize

1. Each State Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the conduct set forth in [article 2, paragraph 2,] [article 2, paragraphs 2 and 3,][11] and shall impose penalties that take into account the grave nature of those offences.

2. Each State Party shall also adopt such measures as may be necessary to establish as criminal offences under its domestic law the following conduct and shall impose penalties that take into account the grave nature of those offences:

[11] The reference to the conduct to be criminalized depends on the choice to be made regarding the content of article 2.

(a) Attempting to commit an offence set forth in [article 2, paragraph 2] [article 2, paragraphs 2 and 3];

(b) Participating as an accomplice in the commission of an offence set forth in [article 2, paragraph 2] [article 2, paragraphs 2 and 3];

(c) Organizing or directing others to commit an offence set forth in [article 2, paragraph 2] [article 2, paragraphs 2 and 3]; or

(d) In any other way contributing to the commission, by a group of persons acting with a common purpose, of an offence set forth in [article 2, paragraph 2] [article 2, paragraphs 2 and 3]; such contribution shall be intentional and shall either be made with the aim of furthering the general criminal activity or criminal purpose of the group or be made in the knowledge of the intention of the group to commit the offence or offences concerned.

3. The knowledge, intent or purpose required to commit an offence set forth in [article 2, paragraph 2,] [article 2, paragraphs 2 and 3,] or in paragraph 2 of this article may be inferred from objective factual circumstances.

Article 4

Assistance for and protection of victims of trafficking[12]

1. [In appropriate cases and to the extent possible under domestic law,[13]] States Parties shall protect the privacy of victims by maintaining the confidentiality of legal proceedings related to trafficking in [persons] [women and children].

2. In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall ensure that its legislative framework contains measures that permit providing, in appropriate cases:

(a) Information to victims of crimes covered by this Protocol with regard to the relevant court and administrative proceedings;

(b) Assistance to victims of crimes covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence; and

(c) Appropriate housing, education and care for children in governmental custody.[14]

3. Each State shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory.

[12] Article 4 in document A/AC.254/4/Add.3, dealing with victims, has been expanded into four separate articles (articles 4-7) in this draft, each addressing a different aspect of victim assistance.

[13] The language in brackets was proposed in document A/AC.254/4/Add.3.

[14] Australia and Canada expressed concern about the consistency of this clause with the Convention on the Rights of the Child (annexed to General Assembly resolution 44/25 of 20 November 1989) (see A/AC.254/5/Add.3).

Article 5
Status of the victim in the receiving State

1. In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall consider providing immigration laws that permit victims of trafficking to remain in its territory, temporarily or permanently, in appropriate cases.

2. Each State Party shall give appropriate consideration to humanitarian and compassionate factors in the determination of a victim's status in its territory when it is the receiving State.

Article 6[15]
Return of victims of trafficking

1. Each State Party agrees to facilitate and accept, without delay, the return of a victim of trafficking who is a national of that State Party or who, at the time of entry into the receiving State, had the right of abode in the territory of the first State Party.

2. At the request of a State Party that is the receiving State, each State Party shall, without undue or unreasonable delay, verify whether a person who is a victim of trafficking is a national of the requested State.

3. In order to facilitate the return of victims of trafficking who are without proper documentation, the State Party of which such a victim is a national or in which he or she had the right of abode at the time of entry into the receiving State shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable the person to re-enter its territory.

Article 7
Victim rehabilitation

1. Each State Party shall ensure that its legislative framework contains measures that, in appropriate cases, provide victims of trafficking in [women and children] [persons] with access to adequate procedures for seeking:

(a) Compensation for damages, including compensation coming from fines, penalties or, where possible, forfeited proceeds or instrumentalities of perpetrators of trafficking in [women and children] [persons]; and

(b) Restitution from the offenders.

2. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of and witnesses to crimes covered by this Protocol, in order to foster their health, self-respect and dignity, in a manner appropriate to their age, gender and special needs.

[15] Australia and Canada suggested that several articles in this Protocol be based on articles contained in the proposals of the United States and Canada regarding the draft protocol against trafficking in migrants (A/AC.254/4/Add.1/Rev.1). The articles of this Protocol thus adapted are articles 6, 9, 10, 11, 14 and 15.

Article 8[16]
Law enforcement measures

1. In addition to adopting the measures provided for in this article and pursuant to article 16 of this Protocol, law enforcement authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information to enable them to determine:

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in [women and children] [persons];

(b) Whether individuals have used or attempted to use altered or falsified documentation to cross an international border for the purpose of trafficking in [women and children] [persons];

(c) The methods used by groups for transporting victims of such trafficking under false identities, or with altered or falsified documentation, and the measures for detecting them; and

(d) Methods and means used for trafficking in [women and children] [persons], including recruitment, routes and links between and among individuals and groups engaged in such trafficking.

2. Each State Party shall provide or strengthen training to prevent trafficking in [women and children] [persons] for law enforcement, immigration and other relevant officials. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims and should encourage cooperation with appropriate non-governmental organizations.

Article 9[17]
Border controls

1. Each State Party shall adopt such measures as may be necessary to detect and prevent trafficking in [women and children] [persons] between its territory and that of any other State Party by strengthening border controls, including by checking persons and travel or identity documents and, where appropriate, by inspecting and seizing vehicles and vessels.

2. Each State Party shall adopt such training and other measures as may be necessary to ensure that victims of trafficking who are detected being trafficked by means of legal or illegal migration receive appropriate protection from the traffickers.

[16] Law enforcement and cooperation provisions (e.g. technical assistance, asset seizure and information exchanges) should be included only insofar as they go beyond those contained in the Convention. Article 16 will incorporate provisions from the Convention that are applicable to the subject matter of this Protocol. The Protocol will therefore have to be reviewed and any redundancies removed when the text of the Convention has been developed more fully.

[17] See footnote 15.

Article 10[18]
Security of travel documents

1. States Parties shall adopt such measures as may be necessary to ensure that travel or identity documents issued by them are of such quality that they cannot readily be unlawfully altered, replicated, issued or otherwise misused.

2. Each State Party shall adopt such measures as may be necessary to ensure the integrity and to control the lawful creation, issuance, verification, use and acceptance of travel or identity documents issued by or on behalf of the State Party.

Article 11[19]
Verification of documents

Each State Party shall, at the request of another State Party and subject to the domestic laws of the requested State, verify without undue or unreasonable delay the legitimacy and validity of travel or identity documents issued in the name of the requested State and suspected of being used for trafficking in [women and children] [persons].

Article 12
Prevention of trafficking

1. Each State Party shall consider establishing social policies and programmes to prevent:

(a) Trafficking in [women and children] [persons]; and

(b) The revictimization of trafficked [women and children] [persons, in particular women and children].

2. States Parties [shall[20]] [shall endeavour to[21]]:

(a) [Endeavour to[20]] Undertake, including through non-governmental organizations, information campaigns and programmes to generate public awareness of the gravity of offences relating to international trafficking in [women and children] [persons]. Such programmes should include information on potential victims, causes and consequences of trafficking, penalties for unlawful acts and the risks that such offences represent to the life and health of the victims;

(b) Establish methods for gathering data and promote research to determine the modus operandi of international trafficking in [women and children] [persons];

(c) Encourage, within the private sector, the establishment of professional associations, foundations, non-governmental organizations and research institutes concerned with the problem of international trafficking in [women and children] [persons]; and

(d) Disseminate information relating to the different forms of international trafficking in [women and children] [persons] and undertake programmed actions to combat such trafficking.

[18] See footnote 15.

[19] See footnote 15.

[20] The language in brackets was proposed in document A/AC.254/8.

[21] The language in brackets was proposed in document A/AC.254/4/Add.3.

3. States Parties [shall[22]] [are encouraged to[23]] provide the Secretary-General of the United Nations with a list of non-governmental organizations devoted to preventing the unlawful acts covered in this Protocol with a view to compiling a database that will enable the non-governmental organizations and States Parties to exchange information.

Article 13
Cooperation with non-States Parties

States Parties [shall[24]] [are encouraged to[25]] cooperate with non-States Parties to prevent and punish trafficking in [women and children] [persons] and to protect and care for victims of such trafficking. To that end, the appropriate authorities of each State Party [shall[26]] [are encouraged to[27]] notify the appropriate authorities of a non-State Party whenever a victim of trafficking who is a national of the non-State Party is in the territory of the State Party.

Article 14[28]
Other measures

1. States Parties may adopt measures stricter than those provided for in this Protocol if, in their opinion, such measures are desirable to prevent, combat and eradicate the crimes covered by this Protocol.

2. States Parties shall take such additional legislative or other measures as they consider appropriate to prevent means of transport operated by commercial carriers from being used in the commission of offences established under this Protocol. Such measures shall include, in appropriate cases, fines and forfeiture to ensure that carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers to see that they each have a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

3. Each State Party shall consider adopting measures that permit, in appropriate cases, the revocation or denial of visas to persons, including foreign officials, known to be implicated in crimes covered by this Protocol.

Article 15[29]
Savings clause

Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law

[22] The language in brackets was proposed in document A/AC.254/8.

[23] The language in brackets was proposed in document A/AC.254/4/Add.3.

[24] The language in brackets was proposed in document A/AC.254/8.

[25] The language in brackets was proposed in document A/AC.254/4/Add.3.

[26] The language in brackets was proposed in document A/AC.254/8.

[27] The language in brackets was proposed in document A/AC.254/4/Add.3.

[28] See footnote 15.

[29] See footnote 15.

and international human rights law and, in particular, where applicable, the 1951 Convention[30] and the 1967 Protocol[31] relating to the Status of Refugees.

Article 16
Other provisions

The provisions of articles [...] of the Convention shall also apply *mutatis mutandis* to this Protocol.

Article 17
Signature, accession and ratification

1. This Protocol shall be open for signature, by any State that has signed the Convention, at [...] from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

2. This Protocol is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Protocol is subject to accession by any State that has signed or acceded to the Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 18
Entry into force

1. This Protocol shall enter into force on the thirtieth day following the date of deposit of the [...] instrument of ratification or accession with the Secretary-General of the United Nations. This Protocol shall not enter into force before the Convention has entered into force.

2. For each State Party ratifying or acceding to the Protocol after its entry into force, the Protocol shall enter into force on the thirtieth day after the deposit by such State of the instrument of ratification or accession.

[The Protocol can rely on the Convention's provisions on denunciation, amendment, languages and depositary.]

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.

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[30] United Nations, *Treaty Series*, vol. 189, No. 2545.

[31] Ibid., vol. 606, No. 8791.